



Office of the Attorney General

State of Texas

August 13, 1998

DAN MORALES

ATTORNEY GENERAL

Ms. Cheryl N. Elliott
General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR98-1924

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117642.

Texas Southern University (the "university") received a request for a copy of the "president's performance review referenced during the Texas Southern University Board of Regents meeting on May 22, 1998." You assert that the requested information is protected by privacy and excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

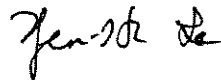
The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). After a review of the requested information, we conclude that the requested information is not excepted from public disclosure by privacy.

However, the requested information includes information that may be excepted from public disclosure by section 552.117. Section 552.117 excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members' information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the address and home telephone number if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

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Enclosures: Submitted documents

cc: Ms. Nancy T. King
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